

STORCH AMINI PC

Jeffrey Chubak
MEMBER NY & NJ BARS

212.497.8247
jchubak@storchamini.com

September 28, 2017

Via ECF and Overnight Mail

Honorable Gregory H. Woods
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: Clark v. Avaya Inc., et al. (In re Avaya Inc., et al.), Case No. 1:17-cv-07379-GHW

Dear Judge Woods:

I am counsel to Appellant Marlene Clark. I write to request a conference to set an expedited briefing schedule on this bankruptcy appeal, which concerns whether her right to payment under the Debtors' supplemental pension plan—which both sides and the Bankruptcy Court agree was triggered by her husband's death—is a “benefit[] in the event of death” provided under a “plan, fund or program” under Bankruptcy Code section 1114(a), and hence entitled to priority under section 1114(e), or whether her right to payment is a non-priority pension benefit.

An expedited briefing schedule is appropriate, given that the Bankruptcy Court is scheduled to consider confirmation of the Debtors' proposed chapter 11 plan—which provides for treatment of Mrs. Clark's right to payment as a non-priority claim—on November 15, 2017 (the objection deadline is November 7, 2017); confirmation of the plan will moot this appeal (*see In re Visteon Corp.*, 612 F.3d 210, 236 (3d Cir. 2010) (“§ 1114's protections terminate upon plan confirmation”)); the Bankruptcy Court took four months to decide her motion (it was heard May 25, 2017, and decided September 18, 2017); and Mrs. Clark cannot afford to bond a suspension or continuation of the confirmation hearing pending appeal under Rule 8007(a)(1)(D) and (c).

I am prepared to file the opening brief and appendix as early as Monday, and wish to complete briefing on a timetable that permits this Court to issue a decision prior to the confirmation hearing. In addition, I would gladly consent to this appeal being decided by Magistrate Judge Peck, particularly if doing so would improve the likelihood that this appeal is decided prior to the confirmation hearing.

Honorable Gregory H. Woods
September 28, 2017
Page 2

For the foregoing reasons, I respectfully request that this Court direct the parties to appear at an in-person or telephonic status conference at its earliest convenience to set an expedited briefing schedule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey Chubak', written in a cursive style.

Jeffrey Chubak

cc: James H.M. Sprayregen
Jonathan S. Henes
Patrick J. Nash, Jr.
Ryan Preston Dahl
Lorenzo Marinuzzi
Todd M. Goren
Ira S. Dizengoff
Philip C. Dublin
Abid Qureshi
Kristopher M. Hansen
Sayam Bhattacharyya
Gabriel E. Sasson